

### Practice Areas

#### Labor and Employment

Affirmative Action Plans and OFCCP Compliance  
EEOC/Agency Class Investigation and Litigation Defense  
Discrimination Defense  
Trials and Arbitrations  
FLSA/Wage-and-Hour Defense  
Corporate Immigration Law  
California Employment Law  
Executive Agreements and Severance  
Labor Management Relations  
Leave of Absence and Disability Advice/Defense  
Non-Compete and Trade Secret Litigation  
Pay Equity Advice and Defense  
Pre-Hire Testing and Background Check Advice/Defense  
Preventive Employment Counseling  
Reductions in Force  
Whistleblower/False Claims Act Defense  
Workplace Investigations  
Industry Focus: Health Care  
Industry Focus: Restaurants  
Industry Focus: Retail  
Industry Focus: Tech  
Startups

In recent years, the EEOC and plaintiffs' class action firms have vigorously pursued claims challenging facially-neutral selection and screening practices that can have disparate impact on protected classes. Nilan Johnson Lewis has extensive experience counseling employers regarding their use of pre-employment assessments (including personality tests, skills assessments, and medical exams), criminal background checks, and other talent selection and screening tools, as well as defending them in investigations and litigation arising from those practices. Our team's fluency in professional standards from the fields of industrial-organizational psychology and criminology, comfort with statistical analysis, and expertise implementing cutting-edge validation strategies enable us to help our clients implement selection and screening tools that maximize their return on investment while staying out of the EEOC's and plaintiffs' sights. We also have extensive experience advising businesses on compliance with the complex framework of federal, state, and local laws regulating selection devices and background checks, including the Uniform Guidelines on Employee Selection Procedures, Fair Credit Reporting Act (FCRA), Title VII, and state and local Ban-the-Box and Fair Chance legislation. If our clients do find themselves the subject of an EEOC investigation or class or individual lawsuit, we bring that same skill and expertise to bear to reduce their exposure and drive favorable resolutions.

### Representative Matters

- *McDade, et al. v. Target Corporation* (S.D.N.Y.): Defended a Fortune 50 employer against a nationwide Title VII class claim alleging that its criminal background checks had a disparate impact on African American and Hispanic applicants. Negotiated a settlement that was far lower than comparable claims against other employers.
- *EEOC (Chicago Office) v. X Corporation*: Defended Fortune 50 employer against a nationwide investigation alleging that the employer's criminal background check policy violated Title VII. The EEOC agreed to dismiss the underlying charges and not to commence litigation.
- *EEOC (Minneapolis Office) v. Target Corporation* (Commissioner's Charge): Defended Target against a Commissioner's Charge of discrimination alleging a nationwide class claim. The EEOC claimed that the employer's pre-employment tests constituted a medical examination in violation of the ADA and had a disparate impact based upon gender, race, and national origin. Negotiated a resolution with the EEOC.
- *Wynn, et al. v. Wells Fargo* (W.D. Wis.): Defended against a national class action under the Fair Credit Reporting Act. Negotiated individual resolutions with the named plaintiffs, after which the class claims were dismissed.
- *Dedering v. Best Buy* (W.D. Wash.): Defended Best Buy in a pre-adverse action lawsuit under FCRA and Washington state law. Negotiated individual resolution with the plaintiff.
- *Ankarlo v. Wells Fargo* (D. Minn.): Defended against a national class action under the Fair Credit Reporting Act. Negotiated an individual resolution with the named plaintiff, after which the class claims were dismissed.
- *Martin v. Wells Fargo* (E.D.N.Y.): Created ground-breaking precedent expanding FCRA's investigations exemption. Negotiated individual resolution with the plaintiff.

- *Just v. Target Corporation* (D. Minn.): Defended against a national FCRA disclosure class action. Prevailed on motion to dismiss. On appeal, consolidated with *Freckleton v. Target* and negotiated class-wide settlement with no payment on disclosure claims.
- *Freckleton v. Target Corporation* (D. Md.): Defended against a national class action under the Fair Credit Reporting Act. Negotiated a class-wide settlement with no payment on disclosure claims.